Dura Art Stone, Inc. *and* United Electrical, Radio and Machine Workers of America, Local 1421

Amalgamated Industrial Workers Union, Local 61 *and* United Electrical, Radio and Machine Workers of America, Local 1421. Cases 31–CA–26009 and 31–CB–11160

December 23, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On July 31, 2003, Administrative Law Judge William L. Schmidt issued the attached decision. Each Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Employer, Dura Art Stone, Inc., Fontana, California, and its officers, agents, successors, and assigns, and the Respondent Union, Amalgamated Industrial Workers Union, Local 61, and its officers, agents, and representatives, shall take the action set forth in the Order.

[1] The Respondent Union has requested oral argument, and the Charging Party has opposed the request. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties. We also deny, as mooted by this Decision and Order, the Regional Attorney's Sept. 13, 2005, "Motion for the Board to Give Priority" to this case.

[2] We address only the conduct that Respondents actually engaged in—continuing their negotiations and executing a collective-bargaining agreement when they had knowledge of the employee disaffection petition establishing the Union's loss of majority status. We agree with the judge, substantially for the reasons he stated, that, under the Board's precedent, the Respondents' conduct violated the Act as alleged. There was no timely petition pending before the Board, and, thus, fn. 52 and related text in *Levitz Furniture*, 333 NLRB 717 (2001), do not privilege the conduct here. Because *Levitz* is not further implicated here, we do not pass on other aspects of that case. Accordingly, we do not rely on the judge's statement that "*Levitz* left little doubt that an employer, faced with knowledge that the incumbent union has lost its majority support, must withdraw recognition."

Brian Gee, Esq., for the General Counsel.

Gordon A. Letter and *Robert F. Millman, Esqs. (Littler Mendelson, PC),* of Los Angeles, California, for Dura Art Stone, Inc.

Howard Z. Rosen, Esq. (Posner & Rosen, LLP), of Los Angeles, California, for Amalgamated Industrial Workers Union, Local 61.

Polly J. Halfkenny, General Counsel, United Electrical, Radio and Machine Workers of America (UE), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This consolidated proceeding arises from charges filed by United Electrical, Radio and Machine Workers of America, Local 1421 (UE or the Charging Party) on November 4, 2002,[1] alleging that Dura Art Stone, Inc. (Dura Art Stone or Respondent Employer) violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act (the Act), and that Amalgamated Industrial Workers Union, Local 61 (Local 61 or Respondent Union) violated 8(b)(1)(A) and (2) of the Act.[2] Based on those charges, the Regional Director for Region 31 of the National Labor Relations Board (NLRB or the Board) issued a formal complaint March 31, 2003, alleging that Dura Art Stone and Local 61 engaged in unfair labor practices by entering into a collective-bargaining agreement containing a union-security clause and a dues-checkoff provision at a time when both knew that Local 61 no longer enjoyed the support of a majority of the unit employees covered by that agreement.

After reviewing the entire record, resolving where necessary credibility issues on the basis of a variety of factors, including the demeanor of the witnesses,[3] and after considering the briefs filed by all parties, I have concluded the General Counsel has proven that Respondents violated the Act as alleged based on the following

FINDINGS OF FACT

I. JURISDICTION

Dura Art Stone, a corporation, with an office and place of business in Fontana, California, is engaged in the business of manufacturing architectural products in cast stone and cast gypsum. It annually purchases and receives goods and services valued in excess of $50,000 directly from points located outside the State of California. Accordingly, I find the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, subject to the

[1] Where not shown otherwise, all further dates refer to the 2002 calendar year.

[2] The UE amended its charge against Respondent Employer on December 3. It amended its charge against Respondent Union on November 5 and again on December 3.

[3] My findings reflect credibility resolutions using, in the main, various factors summarized by Judge Medina in *U.S. v. Foster*, 9 F.R.D. 367, 388–390 (1949). In making these findings, I have considered all of the testimony and documentary evidence. I do not credit testimony inconsistent with my findings.

Board's jurisdiction, and that it would effectuate the purposes of the Act for the Board to exercise that jurisdiction to resolve this dispute.

I further find that Respondent Union, Amalgamated Industrial Workers Union, Local 61 and Charging Party United Electrical, Radio and Machine Workers of America, Local 1421, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Relevant Facts

Between 1990 and 2002, Dura Stone and Local 61 were signatory to a series of 3-year collective-bargaining agreements, the most recent being effective from 1999 through October 21, 2002 (99-02 contract). The 99-02 contract contained the terms and conditions of employment for the Dura Art Stone employees employed in the following appropriate unit:

> Finishing employees, welders, forklift operators, drivers, housekeeping and janitorial employees employed at the Dura Art Stone plant in Fontana, California, but excluding all office clerical employees, salespersons, guards, supervisors as defined in the Act, as amended, and specialized skills covered by other collective-bargaining agreements.

At relevant times in 2002, Dura Art Stone employed about 62 employees in this unit.

On July 9, 2002, John Romero, president of Local 61, sent a letter to Dura Art Stone President Thomas Seifert expressing his wish to "renegotiate" a new contract in light of the existing CBA's approaching expiration. In a letter to Romero dated July 16, Seifert acknowledged receipt of Romero's letter, advised that he would be away from his office until July 29, and promised to schedule negotiations with Romero when he returned. After Seifert returned, negotiations commenced; they continued through August, and half of September. Admittedly, the parties concluded no final agreement up to that time.

In the meantime, unit employees were discussing their dissatisfaction with Local 61 representation among themselves. After considerable talk, one unit employee, Francisco Ledezma, sought assistance from Libreria del Pueblo, a community organization. A Libreria del Pueblo representative arranged a meeting between four of the unit employees and Miguel Canales, a UE field organizer. Subsequently, Canales held more meetings involving larger groups of employees at Ledezma's home and began obtaining signed authorization cards. However, neither the UE nor any other labor organization or person filed any type of representation petition with the NLRB during the 90- to 60-day open period before the expiration of the 99-02 contract.

On September 20, Seifert received a petition dated September 18, and signed by 48 unit employees expressing their lack of support for Local 61. The petition stated explicitly that the signers did not have confidence in Local 61, did not want Local 61 to represent them anymore, and did not want Seifert to negotiate further with Local 61. On September 30, Seifert informed Romero of the petition. Romero received a copy of the petition before October 17. Nevertheless, Seifert and Romero continued the negotiations for a new contract between September 30 and October 16. On October 17, Seifert and Romero signed a contract for the term of October 22, 2002 to October 21, 2005 (02-05 contract).

The 02-05 contract continued the union-security and dues-checkoff provision contained in the predecessor agreement. The union-security clause provides: "It shall be a condition of employment that all employees of the Employer covered by this Agreement shall, within thirty (30) days after their date of hire, become and remain member[s] of the Union in good standing. The initiation fee, to be deducted one time only upon Union membership, and the dues schedule are on file with the Company." The dues-checkoff provision provides in relevant part: "It is expressly agreed by and between the Employer and the Union, that the Employer at its sole discretion may deduct from the wages of employees Union dues, provided that the Employer has received from such employee a voluntary, written authorization of the amount to be deducted from his/her wages. It is expressly agreed that the Employer may discontinue deducting from the wages of employee union dues at any time at its sole discretion."

On October 25, Canales wrote a letter to Seifert and hand delivered it to his office at the Fontana facility. The letter requested that Dura Art Stone recognize and negotiate with the UE as the collective-bargaining representative of the unit employees represented by Local 61. It further offered to prove the UE's majority status by means of a card check. Seifert never responded to Canales' letter. On October 28, the UE filed a NLRB representation petition seeking to represent the employees covered by the recently signed 02-05 contract.

B. Argument

The General Counsel contends that Dura Art Stone and Local 61 violated Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2), respectively, because they entered into a new contract, containing a union-security clause and a dues-checkoff provision, with knowledge that Local 61 no longer represented a majority of the unit employees. The General Counsel relies on a consistent line of Board decisions commencing with *Hart Motor Express*, 164 NLRB 382 (1967), that hold a respondent employer and incumbent union have violated the Act by entering into a new contract after acquiring knowledge that the union no longer enjoys majority support. See, e.g., *Point Blank Body Armor, Inc.,* 312 NLRB 1097 (1993); *Kenrich Petrochemicals*, 149 NLRB 910 (1964); *Presbyterian Community Hospital*, 230 NLRB 599 (1977); *Pepsi Cola Bottling Co.,* 187 NLRB 15 (1971).

In cases of this nature, counsel for the General Counsel perceives four elements to establish a violation:

> 1. Both Respondents received the employee petition during the insulated period of the last 60 days before expiration of the existing collective-bargaining agreement.
>
> 2. Respondents continued to negotiate and execute a contract despite their knowledge of Local 61's minority status.
>
> 3. The contract executed by the Respondents on October 17 contained a union security clause and dues-checkoff provision.

4. No election petition had been filed or was pending with the Board prior to October 17.

Although General Counsel acknowledges that *Levitz Furniture Co.,* 333 NLRB 717 (2001), created a "petition pending" exception to the usual rule that an employer must cease recognizing a minority union, he asserts that principle has no application here because no party had filed a petition by the time Dura Art Stone and Local 61 signed the new contract. Simply put, the General Counsel contends Respondents' conduct in negotiating, executing, and implementing the 2002–2005 contract should be found unlawful based on the principle that an employer may not execute a collective-bargaining agreement with a minority union. *Ladies' Garment Workers (Bernhard-Altmann) v. NLRB*, 366 U.S. 731 (1962). The Charging Party concurs with the General Counsel's contentions.[4]

Both Respondents complain, in effect, that it would have been impossible for a petition to have been filed at the time employees presented Seifert with their disaffection petition because of the Board's contract bar rules. Dura Art Stone contends that it did not violate the Act by negotiating and executing the 2002–2005 contract with Local 61 because, under *Deluxe Metal Furniture Co.,* 121 NLRB 995 (1958), and *Hajoca Corp.*, 291 NLRB 104 (1988), Local 61 enjoyed an "irrebuttable" presumption of majority when both Respondents received the employee petition. Dura Art Stone argues that *Kenrich Petrochemical* and the *Hart Motor Express* line of cases erroneously fail to recognize the existence of an irrebuttable presumption during the last 60 days of a contract.

Dura Art Stone contends that *Levitz* overturned *Hart Motor Express* in cases in which an election petition is pending, but is silent on the issue of whether an employer may withdraw recognition when the union has lost majority status if no petition has been filed. Dura Art Stone would have the Board rule that, if no petition has been filed, and the employer and union reach a new agreement during the insulated period, the agreement should be given full effect, regardless of an employee petition rescinding majority support for the union.

Dura Art Stone further argues that it did not violate the Act by executing the October 2002 agreement with Local 61 because the unit employees could have filed an election petition during the open period prior to August 22, as provided in *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962), but they did not. Dura Art Stone contends that, because Seifert had no knowledge of whether the employee petition accurately reflected employee sympathies concerning Local 61, he was obligated to continue negotiating with the Union, and to execute a written memorialization of the agreement reached.

Local 61 also disagrees with the Board's decision in *Kenrich Petrochemicals* to the extent that it gives effect to employee petitions, such as the one here, signed during the insulated period. Local 61 views such holdings as contrary to *Deluxe Metal*. Local 61 also disagrees with the Board's conclusion in *Hart Motor Express* that a statement from a majority of bargaining unit employees that they no longer wish to be represented by the union demonstrates a loss of majority status. Local 61 argues that because the Board did not require an employer (who had not expressly agreed to do so), to accept union authorization cards as proof of majority status in *Jefferson Smurfit Corp.,* 331 NLRB 809 (2000), Dura Art Stone should not be required to accept the employee petition as evidence that Local 61 had lost majority status.

Local 61 contends that only a Board election can definitively determine loss of majority status and cites *Maramont Corp.*, 317 NLRB 1035 (1995), in which the judge found that a disaffection petition signed by the majority of unit employees did not reflect actual loss of majority status. Local 61 further contends that *Levitz* held that the preferred way to determine majority status is with an election because, as the judge in *Maramont* found, neither a union nor an employer can know whether an employee petition truly represents the desires of the signers.[5]

Local 61 further argues that Dura Art Stone's employees should have filed an election petition during the open period if they did not wish to be represented by Local 61 any longer. The employees' actions here, Local 61 argues, were exactly what *Deluxe Metal* was designed to prevent by establishing the 60-day insulated period. Because no party filed an election petition, Local 61 claims it was free to negotiate and execute the October 17 contract.

C. Further Findings and Conclusions

At the outset, I reject the claim both Respondents advance to the effect that this employee petition fails to accurately reflect employee sympathies toward Local 61. In my judgment, its language rejecting Local 61 is unambiguous and unmistakable. No one questions the authenticity of the employee signatures that appear on the petition. In these circumstances, the wording of the petition deserves to be given its plain meaning. *DTR Industries*, 311 NLRB 833, 840 (1993) (the Board does not, in the absence of misrepresentations, "inquire into the subjective motives or understanding of the [authorization] card signer to determine what the signer intended to do by signing the card").

I concur with the General Counsel's contention that *Hart Motor Express* and its progeny control this case. Although the Respondents' contentions regarding the application of the insulated period to this situation which they fashion from dicta in *Deluxe Metal* has some surface appeal, the Board specifically noted in *Hart Motor Express* that *Deluxe Metal* cannot be applied to strip employees of their Section 7 rights by keeping them shackled to an agreement with a representative they do not want. Even though the Board's recent decision in *Levitz Furniture* created an exception to the basic principle that an employer violates the Act by continuing to recognize and contract with an incumbent union known to have lost its majority status, the exception created relates to situations where a repre-

[4] At the outset of the hearing, during consideration of Respondents' petitions to revoke the UE's subpoena served upon them, the UE signaled its intention to offer evidence that the Respondents negotiated the 2002–2005 contract after the UE filed its representation petition on October 28, and backdated its actual execution. I ruled that the UE's theory was at variance with the General Counsel's theory of the case and refused to litigate the UE's theory.

[5] I note, however, that the Board in *Maramont* rejected the judge's rationale and held that both the employer and the union can be charged with knowledge that the union had lost majority status when they received an employee-sponsored petition to that effect. Id. at 1036.

sentation petition is pending before the Board. This exception aside, *Levitz*, in effect, reaffirms the general principle found in *Hart Motor Express*.[6] Because no petition was pending when the 02-05 contract was signed, the *Levitz* exception to the *Hart Motor Express* principle is inapplicable here.

On closer inspection the Respondents' arguments fashioned out of the *Deluxe Metal* dicta lose considerable luster. Unlike the situation here, that case and its subsequent refinements in *Leonard Wholesale Meats,* 136 NLRB 1000 (1962), and *General Cable Corp.,* 139 NLRB 1123 (1962), are deeply rooted in the Board's administration of its responsibilities under Section 9 and, to a degree, Section 8(d). The contract bar policies established in these cases are limited to the utilization of the Board's representation procedures under Section 9, in order to provide a modicum of stability to the collective-bargaining relationship by insulating it from Board petitions filed by rivals. Nothing in the Board's contract bar rules serves to preclude the type of employee Section 7 activity which occurred here. Simply put, the contract bar rules were not designed for that purpose.

Because of the Board's contract bar doctrine, employees as well as rival unions have a limited 30-day period in which to petition the Board for a change in representation. In its argument, Dura Art Stone referred to this 30-day open period as an exception to the incumbent union's so-called irrebuttable presumption. Applying that rationale, it could be said with equal or greater force, that the principle articulated in *Hart Motor Express* is simply another exception to the irrebuttable presumption. Nothing in the *Deluxe Metal* rationale, or the context in which it applies, suggests that the Board ever intended thereby to impose a bargaining agent on a nonconsenting majority, a practice the Supreme Court condemned in the *Bernhard-Altmann* case because "[t]here could be no clearer abridgment of Section 7 of the Act." Supra, 366 U.S. at 737.

Finally, I reject Respondent Dura Art Stone's contention that it faced a no-win situation because it was exposed to the risk of being held responsible for violating the Act if it refused to bargain with Local 61, as well as the risk of violating the Act if it continued to recognize Local 61. In my judgment *Levitz* left little doubt that an employer, faced with knowledge that the incumbent union has lost its majority support, must withdraw recognition. Rather than doing that, the facts here support the inference that the Respondents hurried to conclude the 02-05 contract before the old agreement expired. For these reasons, I find Respondents violated the Act as alleged.

CONCLUSIONS OF LAW

1. Dura Art Stone is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 61 is a labor organization within the meaning of Section 2(5) of the Act.

3. Local 61 represented the following appropriate unit of employees:

> Finishing employees, welders, forklift operators, drivers, housekeeping and janitorial employees employed at the Dura Art Stone plant in Fontana, California, but excluding all office clerical employees, salespersons, guards, supervisors as defined in the Act, as amended, and specialized skills covered by other collective-bargaining agreements.

4. By negotiating and executing a collective-bargaining agreement covering the employees in the above unit, which included a union-security clause and dues-checkoff provision, at a time when the Union no longer represented a majority of such employees, Dura Art Stone engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act and Local 61 engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and 8(b)(2) of the Act.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent Employer and Respondent Union have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As Respondent Employer and Respondent Union executed a collective-bargaining agreement when the Union did not enjoy majority support, I recommend that Respondent Employer be required to withdraw recognition of Local 61 and that both Respondents cease giving effect to their collective-bargaining agreement of October 17, 2002. However, nothing in this Decision and Recommended Order shall be deemed to require the Respondent Employer to vary or abandon any wage, hour, seniority, or other term of employment, which the Respondent Employer has established in the performance of the contract, or to prejudice the assertion by employees of any rights they may have under the contract.

Further, as the collective-bargaining agreement contained a union-security clause and a check-off provision, I recommend that the Respondents be required to jointly and severally reimburse the unit employees for any amount deducted from their earnings by Respondent Employer and paid to Respondent Union, or otherwise paid to Respondent Union, for dues, fees, or other obligations of union membership, pursuant to the collective-bargaining agreement executed on October 17, 2002. *Hart Motor Express,* supra. Interest on such payments or deductions from earnings shall be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

[6] Thus the Board pointed out that "[u]nder Board law, if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to employees' free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union. But an employer violates Section 8(a)(2) only by continuing to recognize a union that it knows has actually lost majority support, not one whose majority status is merely in doubt." 333 NLRB at 724. (Footnotes omitted.)

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

A. The Respondent Employer, Dura Art Stone, Inc., Fontana, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing or otherwise contributing support to Respondent Union unless it is certified as the employee collective-bargaining representative in an election conducted by the NLRB.

(b) Giving effect to its collective-bargaining agreement with Respondent Union dated October 17, 2002, or to any extension, renewal, or modification thereof; provided, however, that nothing in this Order shall be deemed to require the Respondent employer to vary or abandon any wage, hour, seniority, or other substantive term of employment established under the contract, or to prejudice the assertion by employees of any rights they may have under the contract.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Fontana, California, copies of the attached notice marked "Appendix A."[8] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent Employer has gone out of business or closed the operations involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent Employer at any time since November 4, 2002.

(b) Post at the same places and under the same conditions as set forth in (a) above, and as soon as they are forwarded by the Regional Director for Region 31, copies of the Respondent Union's notice herein marked "Appendix B."

(c) Withdraw and withhold recognition of Local 61 until it becomes certified as the employee representative following an NLRB-supervised election.

B. The Respondent Union, Amalgamated Industrial Workers Union, Local 61, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Giving effect to its collective-bargaining agreement with Respondent Employer dated October 17, 2002, or to any extension, renewal, or modification thereof.

(b) Causing or attempting to cause the Respondent Employer to discriminate against employees in violation of Section 8(a)(3) of the Act by entering into, or maintaining, any agreement with the Respondent Employer which requires, as a condition of employment, membership in the Respondent Union, or in any like or related manner causing, or attempting to cause, the Respondent Employer to discriminate against any employee in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of Dura Art Stone, Inc., in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its union office in Colton, California, copies of the attached notice marked "Appendix B."[9] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Union has gone out of business or closed the facility involved in these proceedings, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members of the Respondent Union at any time since November 4, 2002.

(b) Sign and return to the Regional Director, sufficient copies of the notice for posting by Dura Art Stone at its Fontana, California facility, as provided above.

C. Both Respondents shall be ordered to

1. Jointly and severally reimburse employees of the Respondent Employer for any amounts paid to Respondent's Union, or deducted from their earnings by Respondent Employer, for dues, fees, or other obligations of union membership, pursuant to the collective-bargaining agreement executed on October 17, 2002, with interest as provided in the remedy section of this decision.

2. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[9] See fn. 8, supra.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT contribute support to Amalgamated Industrial Workers Union, Local 61 by recognizing Local 61 as the collective-bargaining representative for the following unit of employees:

> Finishing employees, welders, forklift operators, drivers, housekeeping and janitorial employees employed at the Dura Art Stone plant in Fontana, California, but excluding all office clerical employees, salespersons, guards, supervisors as defined in the Act, as amended, and specialized skills covered by other collective-bargaining agreements.

WE WILL NOT give effect to our collective-bargaining agreement of October 17, 2002, with Amalgamated Industrial Workers Union, Local 61. We are not required, however, to vary the wages, hours, seniority or other terms of employment established under the agreement, and our employees are free to assert any rights they may have under the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL withhold recognition of Local 61 as the representative of our employees until they are certified as such following an election conducted by the NLRB.

WE WILL jointly and severally, with Amalgamated Industrial Workers Union, Local 61, reimburse our employees for any amounts deducted from your earnings and paid to Local 61, for dues, fees, or other obligations of union membership, pursuant to our collective-bargaining agreement executed on October 17, 2002.

DURA ART STONE, INC.

APPENDIX B

NOTICE TO MEMBERS AND
DURA ART STONE, INC. EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT perform, enforce, or give effect to our collective-bargaining agreement of October 17, 2002, with Dura Art Stone, Inc.

WE WILL NOT cause or attempt to cause Dura Art Stone, Inc. to discriminate against employees in violation of Section 8(a)(3) of the Act by entering into or maintaining any agreement with Dura Art Stone, which requires membership in our organization as a condition of employment, or in any like or related manner cause, or attempt to cause, Dura Art Stone to discriminate against any employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce the employees of Dura Art Stone, Inc., in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL jointly and severally, with Dura Art Stone, Inc. reimburse Dura Art Stone employees for any amount paid to our organization, or deducted from their earnings, for dues, fees, or other obligations of union membership, pursuant to our collective-bargaining agreement executed on October 17, 2002.

AMALGAMATED INDUSTRIAL WORKERS UNION, LOCAL 61